



**COLORADO**

**Department of  
Regulatory Agencies**

**2014 Sunset Review:  
Portions of the Mortuary Science Code**

*Office of Policy, Research and Regulatory Reform  
October 15, 2014*



**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 15, 2014

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of portions of the Mortuary Science Code. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2015 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 54 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Colorado Division of Professions and Occupations and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley  
Executive Director





# COLORADO

## Department of Regulatory Agencies

### 2014 Sunset Review Portions of the Mortuary Science Code

#### SUMMARY

##### *What Is Regulated?*

Among the sections of the Mortuary Science Code (Code) subject to this sunset review are the administration of the Code by the Director of the Division of Professions and Occupations (Director and Division, respectively) with respect to the registration of funeral homes and crematories, and title protection for certain individuals who work in registered establishments.

##### *Why Is It Regulated?*

The registration of facilities ensures that there is a known entity that is responsible for fulfilling the standards established in the Code. The Code contains provisions for proper embalming, refrigeration, and cremation, among other things.

##### *Who Is Regulated?*

During fiscal year 12-13, there were 205 funeral homes and 59 crematories registered with Director.

##### *How Is It Regulated?*

To become registered, a funeral establishment or crematory must have a designated employee who is responsible for complying with the provisions of the Code, a specific facility location, and a list of services provided.

To qualify for title protection as a mortuary science practitioner, funeral director, cremationist, or embalmer one must have requisite training and experience and be employed at a registered facility.

##### *What Does It Cost?*

Administration of the Code is funded through the registration fees credited to the Division cash fund. During fiscal year 12-13, the Division expended \$92,379 and utilized 0.70 full-time equivalent employees administering the Code.

##### *What Disciplinary Activity Is There?*

There is very little disciplinary activity executed against registered facilities under the Code. During the years under sunset review, fiscal years 09-10 through 12-13, there were 67 total complaints. Those complaints resulted in 44 disciplinary actions taken by the Director. Eighty percent of those actions were levied against facilities for not being registered or failing to renew a registration.

## KEY RECOMMENDATIONS

*Continue the registration program and the Director as the administrator of the Code for nine years, until 2024.*

Registration programs are most appropriate for businesses where the risk of public harm is low but is present. When a registration program exists, the public is mindful that regulators are aware of every facility in operation, and if a facility fails to operate according to legally determined standards, it may lose its ability to operate. In this regard, and in this instance, registration represents the least restrictive regulation consistent with protecting the public interest.

*The Code should unambiguously state when a registered facility becomes solely responsible for human remains and when that responsibility ceases.*

Cases where human remains are misplaced are rare considering that in Colorado approximately 33,000 people die every year. But the misplacing of remains does happen on occasion. To help prevent this situation from occurring, it should be a violation of the Code for a registered facility to take possession of human remains without proper identification of those remains.

## MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Coroners Association  
Colorado Funeral Directors Association  
Denver Metropolitan Funeral Directors Association  
Division of Professions and Occupations  
National Funeral Directors Association  
Office of the Attorney General  
Office of the State Registrar of Vital Statistics  
State Anatomical Board

### What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:  
Colorado Department of Regulatory Agencies  
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## Background

### Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
  - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

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## Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

## Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

## Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.



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## Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

## **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.dora.colorado.gov/opr](http://www.dora.colorado.gov/opr).

The regulatory functions of the Director of the Division of Professions and Occupations (Director and Division, respectively) as enumerated in Article 54 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2015, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of portions of the Mortuary Science Code (Code) pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed registration of funeral establishments and crematories, title protection for mortuary science practitioners and cremationists, and administration of the Code should be continued for the protection of the public and to evaluate the performance of the Director. During this review, the Director must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

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## Methodology

As part of this review, DORA staff interviewed Division staff; reviewed Division records, including complaint and disciplinary actions; interviewed officials with state and local professional associations; reviewed Colorado statutes and program rules; and reviewed the laws of other states.

## Profile of the Profession

Funeral directors organize the logistical details of funerals. In most cases, an interview with the family informs them of the family's and/or decedent's wishes concerning the nature of a service and the final disposition of the remains. At times they are tasked with preparing an obituary and placing it in the appropriate media. Other logistics typically include preparing the sites of any services, arranging a burial site with a representative of the cemetery, coordinating pallbearers, and organizing officiants.

In Colorado, the Code describes what a funeral establishment must contain, provisions for proper embalming, refrigeration, and cremation, among other things.

An important charge of a funeral establishment is to arrange transportation for human remains. The transport may be near the location of the body at the time of death or it may require preparation and shipment of the remains for burial outside of the area.

Most bodies are embalmed. Embalming is the funeral custom of cleansing and disinfecting bodies after death. As far back as the ancient Egyptians, people have used oils, herbs and special body preparations to help preserve the bodies of their dead. Today there are two primary reasons for embalming: to allow adequate time between death and final disposition to observe customs such as visitations and funeral services, and to prevent the spread of infection.<sup>2</sup>

In the U.S., burial is the most common method of handling remains. However, cremation is used more often than in the past. Cremation allows more flexibility for scheduling of services to accommodate family and friends and is generally much cheaper than a burial.

Though they deal with highly personal and emotional subject matter, funeral service facilities are businesses and the funeral directors are either owner-operators or employees of the business. In addition to all of the logistics and organization involved with each death that the facility manages, there is the responsibility of running a business. Businesses require records, compliance with regulations, and productivity to remain operable.

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<sup>2</sup> Funeralplan.com. *Embalming - The Basics of Embalming and Funeral Services*. Retrieved July 9, 2014, from <http://www.funeralplan.com/products/embalming.html>

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## Legal Framework

### History of Regulation

Concerns about the potential danger to public health from improperly embalmed or preserved bodies led to the formation of the Colorado State Board of Embalming Examiners in 1913. At that time there was fear that infectious diseases could be transmitted by improper embalming practices performed by unqualified people.

The name of the Colorado State Board of Embalming Examiners was changed twice: once in 1939 to the Board of Funeral Directors and Embalmers and again in 1967 to the Board of Mortuary Science (Board). Under the Administrative Reorganization Act of 1968, the Board was placed in the Department of Regulatory Agencies (DORA), as a Type 1 board in which regulatory power and rulemaking authority are vested with the Board.

During 1977, both a sunset review, performed by DORA, and a performance audit, performed by the Colorado State Auditor, recommended elimination of the Board. However, it was not until 1983 that House Bill 83-1107 terminated the Board and licensure of funeral directors. Portions of what was the practice act were continued as the Mortuary Science Code (Code). The Code is contained in Article 54, Title 12, Colorado Revised Statutes (C.R.S.), and generally governs both the facilities and the individuals who practice mortuary science.

Following the 1983 sunset, DORA performed three sunrise reviews of funeral service practitioners: 1990, 2002, and 2007. All of the sunrise reviews recommended against the regulation of individuals but continuing the regulation of the facilities. However, the 2007 sunrise review did recommend that a person be designated as a responsible person for each facility.

During 2009, the General Assembly adopted a registration requirement for funeral establishments and crematories,<sup>3</sup> and title protection for mortuary science practitioners and cremationists.<sup>4</sup> These sections of the Code, and the administration of the Code by the Director of the Division of Professions and Occupations (Director and Division, respectively),<sup>5</sup> are the subject of this sunset review. The provisions of the Code that regulate the business conducted in the funeral establishments and crematories are not directly subject to repeal or review. Those sections of the Code describe what a funeral establishment must contain and provisions for proper embalming, refrigeration, and cremation. These are the legal standards of practice for the industry.

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<sup>3</sup> §§ 12-54-110 and 303, C.R.S.

<sup>4</sup> §§ 12-54-111 and 304, C.R.S.

<sup>5</sup> § 12-54-401, *et. seq.*, C.R.S.

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## Funeral Establishment and Crematory Registration

The Code bars any person from offering to sell funeral goods and services to the public or acting as a mortuary science practitioner, funeral director, or embalmer, unless he or she practices at a registered funeral establishment.<sup>6</sup> Likewise, prior to offering funeral goods and services, or the services of a cremationist, a crematory must register with the Director.<sup>7</sup>

To become registered, a funeral establishment or crematory (collectively, registered facility) must have a designated employee who is responsible for complying with the provisions of the Code. The designee must be 18 years old, have two years' experience working in a registered facility, have the management authority to require compliance with the Code, and not be so designated at more than one registered facility. The latter provision does not apply if registered facilities are operated under the same ownership and management, and there is not more than 60 miles between registered facilities within the organization.<sup>8</sup> In addition to a designated employee, a registered facility must provide to the Director:<sup>9</sup>

- The specific location of the facility;
- The date the facility began doing business; and
- A list of services provided at each funeral establishment location, which may include:
  - Refrigerating or holding human remains;
  - Embalming human remains;
  - Transporting human remains to or from the funeral establishment or the place of final disposition;
  - Providing funeral goods or services to the public; and
  - Cremating human remains.

A registered facility has 30 days after a change has been made to its designated employee or the services it offers, to report the change to the Director.<sup>10</sup>

## Title Protection

A registered facility's designated employee is responsible for ensuring all other employees are in compliance with the title protection provisions of the Code pertaining to a mortuary science practitioner, funeral director, embalmer, and cremationist. He or she must keep the records establishing compliance as long as the person is employed at the funeral establishment.<sup>11</sup>

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<sup>6</sup> § 12-54-110(1), C.R.S.

<sup>7</sup> § 12-54-303(1), C.R.S.

<sup>8</sup> §§ 12-54-110(3), 12-54-303(3), and 303(4), C.R.S.

<sup>9</sup> §§ 12-54-110(2)(a) and 12-54-303(2)(a) C.R.S.

<sup>10</sup> §§ 12-54-110(2)(c), 110(2)(d), 12-54-303(2)(c) and 303(2)(d), C.R.S.

<sup>11</sup> § 12-54-110(4), C.R.S.

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A mortuary science practitioner is a person who receives compensation to:<sup>12</sup>

- Embalm or cremate human remains;
- Arrange, direct, or supervise funerals, memorial services, or graveside services; or
- Prepare human remains for final disposition.

To represent oneself as a mortuary science practitioner, an individual must:<sup>13</sup>

- Complete 2,000 hours practicing or interning as a mortuary science practitioner, including experience in cremation and embalming;
- Graduate with a certificate, diploma, or degree in mortuary science from a program accredited by the American Board of Funeral Service Education; and
- Pass the National Board Examination, administered by the International Conference of Funeral Service Examining Boards.

A funeral director is a person who receives compensation to:<sup>14</sup>

- Arrange, direct, or supervise funerals, memorial services, or graveside services; or
- Prepare human remains for final disposition by means other than embalming.

To represent oneself as a funeral director, an individual must:<sup>15</sup>

- Complete 2,000 hours practicing or interning as a funeral director; and
- Have directed at least 50 funerals or graveside services.

An embalmer is a person who receives compensation to embalm or prepare human remains for embalming.<sup>16</sup> To represent oneself as an embalmer, an individual must:<sup>17</sup>

- Complete 4,000 hours practicing or interning as an embalmer; and
- Have embalmed at least 50 human remains.

A cremationist is a person who cremates or prepares human remains for cremation.<sup>18</sup> According to the Code, a person may not advertise, represent, or hold oneself out as or use the title of a cremationist, unless he or she has at least 500 hours practicing or interning as a cremationist and has cremated at least 50 human remains.<sup>19</sup>

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<sup>12</sup> § 12-54-102(16), C.R.S.

<sup>13</sup> § 12-54-111(1), C.R.S.

<sup>14</sup> § 12-54-102(11), C.R.S.

<sup>15</sup> § 12-54-111(2), C.R.S.

<sup>16</sup> § 12-54-102(8), C.R.S.

<sup>17</sup> § 12-54-111(3), C.R.S.

<sup>18</sup> § 12-54-102(4, 7), C.R.S.

<sup>19</sup> § 12-54-304, C.R.S.

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## Administration

The Code instructs the Director to establish registration fees, renewal fees, and delinquency fees for reinstatement.<sup>20</sup> If a funeral establishment fails to renew its registration in accordance with the schedule, the registration expires.

The Director may deny, suspend, refuse to renew, issue a letter of admonition or confidential letter of concern, revoke, place on probation, limit the scope of practice, or fine a registered facility that has misrepresented itself in the registration process, violated the Code or associated rules, or had its registration revoked in another state.<sup>21</sup> The Director may revoke a registration if a registered facility, or its designated employee, is convicted of a felony related to moral turpitude or a Code-related activity.<sup>22</sup> If a registered facility's registration is revoked, it is not eligible to register again for two years.<sup>23</sup> No fine issued by the Director can be less than \$100 or more than \$5,000 for each violation.<sup>24</sup>

The Director has the ability to issue a cease and desist order (CD) under two circumstances: if a person is acting or has acted without the required registration or if there is a credible written complaint that a person is creating an imminent threat to the public. The CD must lay out the legal violation, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unauthorized practices immediately cease. The respondent has 10 days to request a hearing conducted according to the State Administrative Procedure Act.<sup>25</sup>

Additionally, the Director may issue an order to show cause why he or she should not issue a CD for any violation of the Code. In such cases, the individual must be notified of the order's issuance, with a copy of the order, the factual and legal basis for the order, and the date of the hearing no less than 10 nor more than 45 days from the date of issuance.<sup>26</sup>

If a person fails to comply with a final CD or a practice stipulation, the Director may take action to obtain a temporary restraining order and injunctive relief to compel compliance. The notice, hearing, or duration of an injunction or restraining order concerning possible violations must be made according to the Colorado Rules of Civil Procedure.<sup>27</sup> If a person believes he or she is injured by a final CD, he or she may seek judicial review.<sup>28</sup>

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<sup>20</sup> §§ 12-54-110(2)(e), and 402(1), C.R.S.

<sup>21</sup> §§ 12-54-401(1), and 407(2) C.R.S.

<sup>22</sup> § 12-54-401(2)(a), C.R.S.

<sup>23</sup> § 12-54-401(2)(b), C.R.S.

<sup>24</sup> § 12-54-407(2), C.R.S.

<sup>25</sup> § 12-54-406(1), C.R.S.

<sup>26</sup> § 12-54-406(2), C.R.S.

<sup>27</sup> §§ 12-54-406(4), and 408 C.R.S.

<sup>28</sup> § 12-54-406(5), C.R.S.

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On motion of the Director, the court may impose a civil penalty of up to \$1,000 per violation of the Code or associated rule.<sup>29</sup>

The Director, Division staff, witnesses, consultants, and complainants testifying in a Code-related proceeding are immune from civil liability if they acted in good faith, have made a reasonable effort to obtain the facts, and acted with the reasonable belief that the action was warranted by the facts.<sup>30</sup>

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<sup>29</sup> § 12-54-407(1), C.R.S.

<sup>30</sup> § 12-54-403, C.R.S.

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## Program Description and Administration

The Director of the Division of Professions and Occupations (Director and Division, respectively) is the designated authority to implement the Mortuary Science Code (Code), Article 54, of Title 12, Colorado Revised Statutes (C.R.S.). The Director's authority is executed through a program director in the Business and Inspections Branch of the Division.

The registration of funeral homes and crematories began in fiscal year 09-10. Therefore, there are no data to report prior to that fiscal year.

The Director allots less than one full-time equivalent (FTE) employee to the administration of the program. Table 1 enumerates both the manpower and the dollars expended on program administration during the period examined for this sunset review.

**Table 1**  
**Program Expenditures**  
**Fiscal Years 09-10 through 12-13**

Fiscal Year	Total Program Expenditures	FTE
09-10	\$90,298	0.70
10-11	\$84,520	0.70
11-12	\$62,235	0.70
12-13	\$92,379	0.70

The 0.70 FTE in Table 1 includes portions of several FTE, including:

- Deputy Director 0.05
- General Professional V 0.10
- Technician IV 0.10
- Technician IV 0.15
- Administrative Assistant III 0.15
- Administrative Assistant III 0.15

The General Professional V is the Program Director, one Technician IV is the Program Manager, the other Technician IV is the Compliance Manager, one Administrative Assistant III is a Complaint Specialist, and the other Administrative Assistant III is a Licensing Specialist. Not accounted for in the "FTE" expenditure are employees in the centralized offices of the Division which provide management, licensing, administrative, technical, and investigative support. However, the cost of those FTE is reflected in the "Total Program Expenditures."



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## Funeral Home and Crematory Registration

Prior to operating as a funeral home or crematory in Colorado, a business must be registered with the Director. However, facilities that are occasionally rented for memorial services are exempt from this registration requirement. Examples of such facilities are country clubs or even public parks.

Once a business meets the statutory requirements of the Code, an application must be submitted to the Division's Office of Licensing with a fee. Currently, the registration fee for a funeral home or crematory is \$544 per year. An application is kept active up to one year anticipating completion.

Registrations expire on November 30 every year and must be renewed. If a registered funeral home or crematory fails to renew its registration in a timely manner, it must reapply for registration. A new registrant whose registration is issued within 120 days of the next renewal date will also be issued a renewal for the upcoming license period. Table 2 itemizes registration, renewal, and reinstatement fees assessed by the Director during the period under review.

**Table 2**  
**Funeral Home and Crematory Fees**  
**Fiscal Years 09-01 through 12-13**

Fiscal Year	Original	Renewal	Reinstatement
<b>Funeral Homes</b>			
09-10	\$544	Not Applicable	Not Applicable
10-11	\$544	\$210	\$233
11-12	\$544	\$370	\$393
12-13	\$544	\$185	\$203
<b>Crematories</b>			
09-10	\$633	Not Applicable	Not Applicable
10-11	\$633	\$262	\$285
11-12	\$633	\$422	\$445
12-13	\$544	\$185	\$203

During fiscal years 09-10 and 10-11, the number of registered facilities was lower than what was projected which meant that program operations were not fully funded. Subsequently, the Division raised the renewal and reinstatement fees for fiscal year 11-12 to make up the incurred deficit, and assessed it to those facilities that were regulated at that time. The following year the fees were brought back to lower levels.

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If there are multiple funeral home businesses at one address, only one application per address is required, but all businesses must be listed on the application. Likewise, if there are multiple crematory businesses at one address, only one application per address is required, but all businesses must be listed on the application. However, if both funeral and crematory services are offered at the same address, separate applications are required. Conversely, funeral homes that contract out cremation services and crematories that contract out funeral services need to only register in their specialty.

Each applicant must identify an appointed designee on its application. This person is responsible for compliance with the Code. This responsibility includes compliance with the Code's title protection provisions and maintaining records to demonstrate compliance with those provisions.

Table 3 enumerates the funeral homes registered during the period under review.

**Table 3**  
**Registered Funeral Homes**  
**Fiscal Years 09-10 through 12-13**

<b>Fiscal Year</b>	<b>Newly Registered</b>	<b>Renewal</b>	<b>Reinstatement</b>	<b>Active Registrations</b>
09-10	186	0	0	186
10-11	13	178	2	193
11-12	16	171	13	200
12-13	11	194	3	208

Table 4 enumerates the number of crematories registered during the period under review.

**Table 4**  
**Registered Crematories**  
**Fiscal Years 09-10 through 12-13**

<b>Fiscal Year</b>	<b>Newly Registered</b>	<b>Renewal</b>	<b>Reinstatement</b>	<b>Active Registrations</b>
09-10	55	0	0	55
10-11	0	55	0	55
11-12	4	50	2	56
12-13	2	55	3	60

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Tables 3 and 4 indicate that the number of registered facilities has remained fairly static during the period under review with a slight increase in the aggregate number of facilities over the sunset review period. The active registrations are listed as of June 30, which marks the end of the state fiscal year, not the number of active registrations on the November 30 renewal date.

### Complaints/Disciplinary Actions

Complaints against licensees come into the Division from various sources. One may be initiated by a consumer, by another facility or practitioner, or by the Division itself. The Division reviews complaints to determine if a possible violation exists. If there is a possible violation, the licensee is asked to respond to the allegation and the case may be sent to the Division's Office of Investigations for further research. Once the information is collected, the Director reviews it and either dismisses the case, disciplines the licensee, refers the case to the Expedited Settlement Program to negotiate a settlement with the licensee, or refers it to the Office of the Attorney General for discipline. Possible actions include:

- Cease and Desist Order;
- Dismissal;
- Confidential Letter of Concern;
- Letter of Admonition;
- Fine;
- Stipulation;
- Suspension; and
- Revocation.

Table 5 enumerates the number of complaints the Division received during the period examined by this sunset review.

**Table 5**  
**Complaints Received**  
**Fiscal Years 09-10 through 12-13**

Fiscal Year	Number of Complaints
09-10	6
10-11	8
11-12	35
12-13	18

The number of complaints increased dramatically from fiscal year 10-11 to fiscal year 11-12. Division staff explained that this was because several registrants had not renewed during the first registration renewal cycle during fiscal year 10-11. The failure to renew resulted in complaints filed by the Division during fiscal year 11-12.

The Division is tasked with enforcing not only the registration sections of the Code but also the standards of practice sections of the Code. Table 6 represents the number and nature of all complaints filed with the Division. Note the increase in the number of complaints during fiscal year 11-12 concerning “Practicing without a Registration.” This number corresponds with the failure to renew issue explained above.

**Table 6**  
**Complaints by Category**  
**Fiscal Years 09-10 through 12-13**

Category	FY 09-10	FY 10-11	FY 11-12	FY12-13
<b>Funeral Homes</b>				
Practicing without a Registration	2	2	26	5
Substandard Practice	0	5	2	7
Misrepresentation	2	1	0	1
Non Jurisdictional	0	0	0	1
<b>TOTAL</b>	<b>4</b>	<b>8</b>	<b>28</b>	<b>14</b>
<b>Crematories</b>				
Practicing without a Registration	2	0	5	2
Substandard Practice	0	0	2	1
Misrepresentation	0	0	0	0
Non Jurisdictional	0	0	0	0
<b>TOTAL</b>	<b>2</b>	<b>0</b>	<b>7</b>	<b>3</b>

The Director may dismiss a complaint with or without a confidential letter of concern, suspend, refuse to renew, revoke, issue a letter of admonition, place on probation and/or limit the scope of practice with a stipulation, or fine a registered facility that violates the Code.<sup>31</sup>

<sup>31</sup> §§ 12-54-401(1), and 407(2), C.R.S.

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Table 7 enumerates the actions taken by the Director during the period under review.

**Table 7**  
**Final Agency Actions**  
**Fiscal Years 09-10 through 12-13**

Action	FY 09-10	FY 10-11	FY11-12	FY12-13
Revocations	0	0	0	0
Suspensions	0	0	0	0
Stipulations	1	1	2	0
Letters of Admonition	1	0	10	4
Cease and Desist Orders	2	1	15	6
Fines	0	0	1	0
<b>TOTAL DISCIPLINARY ACTIONS</b>	<b>4</b>	<b>2</b>	<b>28</b>	<b>10</b>
Dismissals	0	2	2	4
Letters of Concern	0	4	4	0
<b>TOTAL DISMISSALS</b>	<b>0</b>	<b>6</b>	<b>6</b>	<b>4</b>

Note the number of cease and desist orders issued by the Director is similar to the number of practicing without a registration complaints from Table 6. Both of these concerns are tied to the first renewal cycle after the registration of facilities began.

In addition to the actions taken above, the Director issued fines to one facility during the review period. During fiscal year 11-12 a facility was issued \$8,000 in fines for multiple violations of a cease and desist order.

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## Analysis and Recommendations

### **Recommendation 1 – Continue the registration program and the Director as the administrator of the Mortuary Science Code for nine years, until 2024.**

Only portions of the Mortuary Science Code (Code) are scheduled for sunset review.<sup>32</sup> The assumption when reviewing only portions of a statute, rather than the entire statute, is that regardless of what recommendations for change are made, there are sections of the Code that the General Assembly deems important enough to remain intact. If the General Assembly repealed the portions of the Code under sunset review, there would still be Colorado law governing the standards that each person and facility is required to follow.

This Recommendation 1 addresses the administration of the Code by the Director of the Division of Professions and Occupations (Director and Division, respectively) and the registration of funeral homes and crematories.

The chief question the General Assembly requires to be answered by a sunset review is whether regulation is necessary to protect the public health, safety, and welfare.

The regulation of funeral establishments has been in place in some form or another in Colorado for over a century. The Code lists several unlawful acts, among them:<sup>33</sup>

- To discriminate because of race, creed, color, religion, disability, sex, sexual orientation, marital status, national origin, or ancestry when furnishing funeral services;
- To advertise as holding a degree, a certificate of registration, a professional license, or a professional certification issued by a state, political subdivision, or agency unless the person holds such degree, registration, license, or certification and it is current and valid at the time of advertisement;
- To refuse to properly and promptly release human remains or cremated remains to the custody of the person who has the legal right to effect such release whether or not any costs have been paid;
- To engage in willfully dishonest conduct or commit negligence in the practice of embalming, funeral directing, or providing for final disposition that defrauds or causes injury or is likely to defraud or cause injury; and

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<sup>32</sup> § 24-34-104(46)(I), C.R.S.

<sup>33</sup> § 12-54-104(1), C.R.S.

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- For a person in the business of paying for or providing death benefits, funerals, funeral ceremonies, final dispositions, or preneed contracts to pay or provide benefits in a manner that deprives the next of kin or legal representative of the right to use those payments or benefits at a funeral establishment of his or her choice.

Registration programs are established to protect the public by building minimal barriers to entry to the profession or industry. To become a registered facility, a funeral establishment or a crematory must provide to the Director a location, a list of services being offered, and have a designated person of authority. The designated employee ensures that each service offered at each facility comports with the Code which minimizes possible consumer harm.

Providing the Director a location where regulated activities take place protects consumers if there is ever an issue with regulated activities. If a need arises for the Director to investigate a business, the Director knows the business location, how long it has been operating at its location, who is responsible for regulatory compliance, and compliance history. Additionally, when a facility does not perform services as required by the Code, it can be the subject of a disciplinary action administered by the Director. Reauthorizing the registration program and the implementation of the Code by the Director means that there are specifically selected individuals responsible for following the Code, the designated employee, and ensuring the Code is followed, the Director. These designations benefit any consumer who needs to make a complaint or obtain information.

According to the Colorado Department of Public Health and Environment, there are approximately 33,000 deaths each year in Colorado.<sup>34</sup> Regulatory issues may not arise too often but those few instances tend to be highly emotional and resonate among the public.

Registration programs are most appropriate for businesses where the risk of public harm is low but clearly present. When a registration program exists, the public at least knows that regulators are aware of every facility in operation and if one fails to operate according to legally determined standards it may lose its ability to operate. In this regard, and in this instance, registration represents the least restrictive regulation consistent with protecting the public interest.

Therefore, the General Assembly should continue the registration program and the Director as the administrator of the Code for nine years until 2024.

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<sup>34</sup> Colorado Department of Public Health and Environment. *Vital Statistics Summary: Colorado Residents, 2003, 2009-2013*. Retrieved August 15, 2014, from <http://www.chd.dphe.state.co.us/Resources/vs/2013/Colorado.pdf>

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## **Recommendation 2 – Continue title protection for mortuary science practitioners and funeral directors and repeal title protection for embalmers and cremationists.**

The Code grants title protection to mortuary science practitioners who have completed requisite education, experience, and passed a national examination. It also grants title protection to funeral directors, embalmers, and cremationists who have the requisite experience.

Page 3 of this sunset review explains title protection thusly:

... title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

The key in this Recommendation 2, is in the last sentence, "... the public is alerted to the qualifications..." Mortuary science practitioners and funeral directors offer their services directly to the public even though they must provide the services through a registered facility. Neither embalmers nor cremationists, "...advertise, represent, or hold oneself out as or use the title..."<sup>35</sup> directly to the public. They do not promote themselves or hang a shingle to solicit business. This begs the questions: Who is being protected by title protection? How?

The first sunset criterion asks, if regulation is necessary to protect the public health, safety, and welfare. The Department of Regulatory Agencies (DORA) was unable to find a segment of the population that was protected by granting title protection to embalmers and cremationists.

The Code mandates the services provided by a mortuary science practitioner, funeral director, embalmer, and cremationist must be performed at a registered facility. Registered facilities sometimes use the name of a mortuary science practitioner or funeral director in advertising or when offering services. DORA did not find evidence that embalmers' or cremationists' names are used in advertising for registered facilities.

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<sup>35</sup> §§ 12-54-111(3) and 12-54-304, C.R.S.



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Additionally, there is no requirement in the Code that a person be an “embalmer” to embalm remains. Likewise, there is no requirement in the Code that a person be a “cremationist” to cremate remains. For all of these reasons, the restrictions in the Code of the titles “embalmer” and “cremationist,” as well as the hours required to use those titles, are excessive, unneeded regulation.

Therefore, the General Assembly should continue title protection for mortuary science practitioners and funeral directors and repeal title protection for embalmers and cremationists.

**Recommendation 3 – The Code should unambiguously state when a registered facility becomes solely responsible for human remains and when that responsibility ceases.**

The loss of a loved one is an intimate and personal experience. Rituals such as funerals and memorials allow us to cope with the loss and honor the dead. Often these rituals involve the final disposition of the decedent’s remains.

Cases where human remains are misplaced are rare considering that in Colorado approximately 33,000 people die every year. But the misplacing of remains does happen on occasion. Concurrent with DORA researching this sunset review, one case occurred in Colorado and another in Rhode Island. In the Rhode Island case, a daughter found the wrong body in her mother’s casket. Her mother was mistakenly cremated.<sup>36</sup> When something of this nature happens it can carry high financial and emotional costs for those involved.

When human remains are misplaced often it is because routine protocols were not followed resulting in proper identification not being made. There are some facilities that will place a global positioning system tag on a body and leave it there until right before the final disposition. In one mishandling case, the funeral service facility used a different transport service. In another case, the facility did not receive proper identification prior to final disposition.

A common thread among the cases is that individuals and businesses tend to blame another person or business for any problem.

A solution to this problem pertaining to those regulated under the Code is to determine when the registered facility becomes solely responsible for the remains and when that responsibility ends.

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<sup>36</sup> Newsmax. *RI Woman Finds Wrong Body in Her Mother’s Casket*. Retrieved August 15, 2014, from <http://www.newsmax.com/US/Wrong-Body-in-Casket/2014/01/10/id/546506/>

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This recommendation advances that it should be a violation of the Code for a registered facility to take possession of human remains without proper identification of those remains. Proper identification should be an attestation to identification, on a form promulgated by the Director, by the next of kin who is already defined in the Code, a County Coroner in the county where the body is held, or his or her designee, or an authorized person at the care facility where the individual died. Because there are so many types of care facilities, who an authorized person is and what defines a care facility should be defined by the Director in rule. The rulemaking process will allow the Director to get input from care facilities concerning their protocols and legal responsibilities in these matters.

Once a registered facility takes possession of the remains, it is responsible for those remains until final disposition whether that is burial, cremation, or another choice expressed in the contract for services. It should also be explicit in the Code that facility responsibility encompasses any contractors or other entities it may have a working relationship with on any single case.

To avoid any problems associated with the chain of custody of human remains, the Code should unambiguously state when a registered facility becomes solely responsible for human remains and when that responsibility ceases.

#### **Recommendation 4 – Make technical changes to the Code.**

The Code contains instances of obsolete, duplicative and confusing language. Further, reorganizing some portions of the statute would improve its clarity and readability. The Code should be revised to reflect current terminology and administrative practices and reorganized to group like subjects together. These changes are technical in nature, meaning that they have no substantive impact on the practice of any of the professions regulated under the Code.

The General Assembly should make the following technical changes:

The name of the Division was changed, effective August 8, 2012, from the Division of Registrations, to the current, Division of Professions and Occupations. Replace the Division of Registrations with Division of Professions and Occupations in sections 12-54-102(5.7), Colorado Revised Statutes (C.R.S.) and 12-54-102(6), C.R.S.

Cremationists as individuals are not directly regulated under Code but crematories are required to be registered and have a responsible employee. Replace the word “cremationist” with “crematory” in sections 12-54-301(1), C.R.S. and 12-54-302, C.R.S.